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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,088	08/22/2001	Eugenio Go Varona	14729	9335

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EXAMINER	
PIERCE, JEREMY R	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/935,088	VARONA, EUGENIO GO	
	Examiner	Art Unit	
	Jeremy R. Pierce	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 8-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 8-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on January 26, 2004 has been entered. Claims 1, 15, and 19 have been amended. Claim 20 has been cancelled. Claims 1-6 and 8-19 are currently pending. The amendment is sufficient to overcome the objections made to the Specification regarding new matter set forth in Section 2 of the last Office Action. The amendment to the claims also overcomes the 112 new matter rejection set forth in section 4 of the last Office Action. Finally, the amendment is sufficient to withdraw the 103 obviousness rejection to claim 19 set forth in section 8 of the last Office Action because the cited prior art does not teach creating the "micro-pockets" by creping the nonwoven web.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 and 8-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 15, and 19 recite the nonwoven is "capable of containing superabsorbent." How is capable of containing superabsorbent? The claim is indefinite

because it recites what the material is capable of doing, rather than what the material is or what it does.

Claims 1, 15, and 19 recite "the binder is present in an amount between 1 and 6 weight percent based on a web weight before the addition of superabsorbent." What is this web weight? What constitutes a web? Is the web only fiber? Is the web fiber and binder? Can other things not listed in the claim be included in the web? The amount of binder present is not clearly defined by being present between 1 and 6 weight percent based on a web.

Claims 1 and 19 recite "the superabsorbent is added in an amount between 1 and 80 percent based on the weight of the web." Again, it is not clear what the web includes. Is it only fiber? Or does it now include the binder? What else might be in there not recited in the claims?

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-6, 8-13, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al. in view of Onuschak et al. (U.S. Patent No. 6,139,912).

Tanzer et al. disclose a fibrous absorbent material that contains not more than 5 weight percent of binder material and superabsorbent polymer (column 16, lines 28-37).

The superabsorbent particles can be arranged in separate discrete pockets (column 18, lines 43-46). The superabsorbent particles may be present in an amount of 40% by weight (column 22, line 4). Tanzer et al. do not disclose the volume of the pockets. Onuschak et al. disclose that when superabsorbent particles are used in absorbent products, they have a tendency to swell and cause gel-blocking, which prevents the passage of additional fluid through the fabric (column 1, lines 37-54). Onuschak et al. also teach that keeping the superabsorbent particles separated from one another helps solve the problem of gel-blocking (column 6, lines 19-23). The size of the pockets in Tanzer et al. would be a result effective variable that would affect the amount and separation of superabsorbent particles within the absorbent product. Smaller pockets would allow for increased separation of superabsorbent particles. It would have been obvious to one having ordinary skill in the art to make the pockets between 0.33 and 10 cubic millimeters and between 0.5 and 5 cubic millimeters in order to help prevent gel-blocking by keeping the superabsorbent material separated as taught by Onuschak et al., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Tanzer et al. also do not disclose the permeability of the absorbent product. Tanzer et al. do describe permeability as a result effective variable for the surge management portion of the fabric (column 13, lines 36-41). Adjusting the loft of the web would affect the permeability, which ultimately adjusts the ability of the web to allow liquid to migrate through it. It would have been obvious to one having ordinary skill in the art to construct the material of Tanzer et al. with a permeability of at least

2000 darcys in order to obtain the desired liquid transfer properties for the intended use since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

6. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al. in view of Onuschak et al. and further in view of Shohji et al. (U.S. Patent No. 5,549,964).

Tanzer et al. do not disclose electret treatment of the web. Shohji et al. teach that absorbent garments may undergo an electret treatment to improve filtering (column 9, lines 60-62). It would be obvious to a person having ordinary skill in the art to provide an electret treatment to the material of Tanzer et al. in order to improve filtering of waste fluid components, as taught by Shohji et al.

Response to Arguments

7. Applicant's arguments filed January 26, 2004 have been fully considered but they are not persuasive.

8. Applicant argues that Tanzer teaches multiple layers and not a single layer. In response to applicant's arguments, the recitation of a "single-layer" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA

1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Alternatively, Applicant's claim is using open "comprising" language, so the inclusion of additional layers is not precluded by the current claims. Even if a second layer were used to cover a first layer, the first layer would still meet the structural limitations of the claims because it would have depressions that hold superabsorbent material. The current claim language does not preclude the existence of a second layer.

9. Applicant argues that neither the pocket volume nor the permeability would be result effective variables because the structure of the claim language is non-obvious over Tanzer et al. However, the Examiner has given reasons above in the rejection as to why these variables would be obvious to modify. Absent unexpected results in modifying these variables given the teachings above, adjusting pocket volume or permeability of Tanzer would be obvious.

10. Applicant argues there is no motivation to combine Shohji with Tanzer because the Applicant uses electret treatment as an alternative to using adhesive. However, electret treating is taught by Shohji to improve filtering, which would be useful in the diaper of Tanzer to help separate components of bodily waste that enter into the absorbent product of Tanzer. The motivation for modifying Tanzer to render Applicant's claims obvious does not need to be the same as Applicant's motivation for making the same modification, so long as the modification is reasonable.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 3,670,731 to Harmon; U.S. Patent No. 3,817,827 to Benz; U.S. Patent No. 4,158,594 to Becker et al.; U.S. Patent No. 4,600,458 to Kramer et al.; U.S. Patent No. 5,906,879 to Huntoon et al.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

JRP

ELIZABETH M. COLE
PRIMARY EXAMINER